IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1084 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARLABEN K PANDIT

Versus

DIRECTOR OF EDUCATION

Appearance:

1. Special Civil Application No. 1084 of 1994

MR PARESH M DAVE for Petitioner No. 1

MS REETA CHANDARANA, LD.AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/06/2004

ORAL JUDGEMENT

1. Mrs.Sarlaben Kunjubihari Pandit, petitioner has filed this petition before this Court under Articles 226 and 227 of the Constitution of India with a prayer that

this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the decision of Director of Education, respondent No.1 herein dated 1.12.93 by which the respondents held that the appointment of petitioner was not approved. The petitioner further prayed that this Court may declare that the petitioner is duly appointed teacher whose appointment and continuance in service as Primary Teacher is not to be interfered with and that the petitioner is eligible for the pay-scale of Rs.1200 - 2040 and that no recovery is to be made from the petitioner.

2. This petition was filed on 24th January, 1994, and on 25th January, 1994, this Court issued notice and also granted status-quo as on today. The petition is come up for hearing before this Court.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner date of birth as mentioned in the petition is 10th June, 1941. After passing SSC Examination, petitioner joined third respondent school i.e. Dharmakrupa Kelavani Mandal from 1.1.1980.

3.2 It is a case of the petitioner that the Government has enacted Bombay Primary Education Act and also Bombay Primary Education Rules provided Schedule "F" which provides Model conditions of employment of staff in private schools in State of Gujarat. Clause 6 of the said schedule provides qualification and Clause 7 provides training which reads as under:

"cl.6 Qualification" :- The Management shall appoint only trained teacher who have passed the Secondary School Certificate Examination and also the primary training Certificate Examination. For special subjects, teachers shall be recruited in accordance with the qualifications laid down by the Government for such teacher under the vacancies in the District Education Committees or Municipal School Boards within a period of five years from such date.

"cl.7 Training:- All untrained teachers who are below the age of 35 years on the date of the commencement of these rules shall be required to get training within a period of five years from such date."

3.3 It appears that the first and second respondents raised objection against the appointment of the petitioner on the ground that she could not have been appointed as a teacher because she did not possess the requisite training certificate. Thereafter the petitioner addressed a letter dated 10.7.93 to Director of Primary Education in this behalf.

3.4 Thereafter the Accounts Officer, Primary Education Department, Gandhinagar, has addressed a letter to District Education Officer on 1.12.93 and stated that the appointment of the petitioner was under dispute and the salary in the pay-scale of Rs.1200-2040 was held to be inadmissible and stated that untrained teacher should be given pay-scale of Rs.950-1400 in this behalf. The said letter also pertains to petitioner.

4. Being aggrieved and dissatisfied with the said action, the petitioner has filed present petition before this Court.

4.1 One of the contention in the petition is that petitioner is serving since 30 years in the said school. It is a case of the petitioner that in 1978 the Government of Gujarat made applicable the provisions of the Rules to the Primary Schools imparting education in the State of Gujarat. The Rules also consist of various Schedules, Schedule "F" being one of them. Clause 6 and 7 of the said schedule provides qualification and training which I have already quoted earlier.

4.2 It is a case of the petitioner that clause 7 of the schedule provides that all untrained teachers who are below the age of 35 years on the date of the commencement of these rules shall be required to get training within a period of five years from such date. It is a case of the petitioner that the qualification to be appointed in a primary institution prior to 1978 was only S.S.C. while after 1978 the qualification has been SSC, PTC being the certificate of training. The PTC courses are run by the State Government and the first respondent is the proper officer to implement the curriculum of the examination etc. of PTC.

4.3 It is a case of the petitioner that this schedule "F" was challenged before the Hon'ble Supreme Court in the case of The All Saints High School Vs. The Government of Andhra Pradesh and others reported in AIR 1980 SC 1042. The Hon'ble Supreme Court has considered right of minorities and administer educational institutions and scope and ambit of the right. The

Hon'ble Supreme Court also considered other sections like Schedule "F" also in this behalf.

4.4 The Schedule "F" was also considered by Division Bench of this Court in the case of Benson Knock Semual Vs. State of Gujarat and others reported in 1984(1) GLR 691. The Division Bench of this Court held that these clauses are violative of Article 30 and not applicable to the minority institutions, other provisions of Schedule "F" being in the nature of 'regulatory measures' and, therefore, Schedule "F" was upheld by the Division Bench of this Court. It is a case of the petitioner that after the Schedule "F" has been upheld in 1983 whereas she has joined in service 1980 and therefore her services may be protected.

4.5 It is a case of the petitioner that in view of this letter dated 1.12.93 issued by Accounts Officer to Director of Primary Education is illegal, arbitrary and liable to be set aside.

5. On behalf of the Government, Ms.Reeta Chandarana, learned AGP appears. She has relied upon the affidavit filed by one Shri A.A.Saiyed, Education Inspector, DEO Office, Baroda, dated 24.6.2004. It is a case of the respondent that petitioner was appointed as untrained teacher and therefore the challenge of Schedule "F" has been upheld by the Hon'ble Supreme Court in this behalf. She is continued in service because of the order of this Court. The learned AGP stated that when this Court issued notice also granted interim relief in favour of the petitioner by order dated 25.1.94.

5.1 As regards impugned order, the respondent stated that the impugned order dated 1.12.93 liberal view is taken and instead of permanent service of the petitioner, she has been continued on a pay-scale lower than the pay-scale of a trained teacher. The petitioner thus continued in service in view of the order of this Court. It was stated that the inspection of private school taking grant was carried out in November 1992 and in this inspection the name of the petitioner was appeared as a member of the staff of Respondent No.3. It is a case of the respondent that if petitioner has any grievance, the petitioner could appear before the school authority in this behalf.

5.2 It is a case of the respondents that once Schedule "F" has been upheld by the Hon'ble Supreme Court as well as by this Court and the said Schedule "F" has been upheld in 1984 and till thereafter the petitioner

has no right to continue in service. In view of the same, there is no illegality or infirmity in the order dated 1.12.93 and, therefore, the petition deserves to be dismissed.

6. I have considered the aforesaid submissions in this behalf. It is no doubt true that petitioner was appointed in 1980 at that time she has only passed SSC Examination but thereafter 1984 onwards, once the Schedule "F" has been upheld, the petitioner has no right to continue in service as she was untrained teacher and though she is continued till 1994 and thereafter she has filed the petition and obtained the stay of this Court.

7. It appears that as per her case her date of birth is 10th June, 1941. If the Schedule "F" is applicable then retirement age is 58 years and, therefore, in 1999 she might have retired from the school. To that extent this Court cannot grant any further relief in this behalf because there is no purpose to give any further relief looking to the peculiar facts and circumstances of the case. It is no doubt true that the Government is right that she was untrained teacher after Schedule "F" has been upheld, however, looking to the peculiar facts and circumstances of the case, I am of the view that there is no purpose for passing any order at this stage because regarding salary in view of the interim orders of this Court she has already obtained the same and therefore there is no useful purpose of passing any order to obtain refund back the excess salary. However, for the purpose of pension and other retirement benefits, she will be treated as untrained teacher and Government is entitled to fix all retirement benefits on the basis that she is untrained teacher.

8. In view of the discussions made hereinabove, the petition is rejected. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

(K.M. Mehta, J.)

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